BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)
	)
Cellular Telecommunications & Internet	)
Association's Petition for Rulemaking	)
Concerning the Biennial Review of	)
Regulations Affecting CMRS Carriers	)

To: The Commission

PETITION FOR RULEMAKING OF THE CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION

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THE CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION

CTIA files this Petition to urge the Commission to repeal regulations applicable to CMRS carriers that are unnecessary and not in the public interest. The language of Section 11 compels the Commission to repeal or modify regulations that are "no longer necessary in the public interest,"[1] a standard which is more stringent than the plain "public interest" standard found in other parts of the Communications Act.

I. STANDARD OF REVIEW

Although the courts have not addressed the level of the review and repeal standards in Section 11, the D.C. Circuit's analysis of Section 202(h), which contains language similar but not identical to Section 11, is illuminating. Interpreting Section 202(h) in its original *Fox Television* opinion, the D.C. Circuit panel concluded that "[t]he statute is clear that a regulation should be retained only insofar as it is necessary in, not merely consonant with, the public interest."[2] The D.C. Circuit recently modified its *Fox Television* opinion so as to refrain from

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1 47 U.S.C. § 161(b).

2 Fox Television Stations, Inc. v. FCC, 280 F.3d 1027, 1050 (D.C. Cir. 2002).

reaching the merits of Time Warner's argument that "necessary" in Section 202(h) of the 1996 Act imparted a higher standard than "continues to serve the public interest."[3] Even with the modification, though, *Fox Television* continues to stand for the proposition that Section 202(h) (and, likewise, Section 11) "carries with it a presumption in favor of repealing or modifying the ownership rules."[4]

It is important to note that the D.C. Circuit did not repudiate the panel's original analysis. Rather, it simply refrained from addressing the issue. Indeed, the panel's original interpretation remains consistent with the statutory language contained in Section 11. In urging the court's modification of the opinion, the Commission emphasized the panel's failure to interpret "necessary" in its statutory context.[5] The Commission explained that the mandate of Section 202(h), "to repeal or modify rules, whatever presumption may be deemed to accompany it, omits the term 'necessary.'"[6] By contrast, Section 11 does not contain such discordant standards. In both its standard for the Commission's review and its mandate to repeal or modify regulations, Section 11 uses the phrase "no longer necessary in the public interest."[7] The logical converse of the Commission's position before the D.C. Circuit demands that it attribute meaning to the consistent use of the term "no longer necessary" in Section 11 and the differing statutory

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3 Fox Television Stations, Inc. v. FCC, No. 00-1222, *On Respondents' and Intervenors' Petitions for Rehearing* (D.C. Cir. June 21, 2002).

4 Fox Television Stations, Inc. v. FCC, 280 F.3d at 1048.

5 Fox Television Stations, Inc. v. FCC, Nos. 00-1222, *et al.*, *Petition for Rehearing or Rehearing* En Banc, at 8 (D.C. Cir. April 19, 2002).

6 Id. at 10.

7 See 47 U.S.C. §§ 161(a)(2) and (b).

language between Section 11 and Section 202(h), particularly given that these two statutory provisions were enacted simultaneously.[8]

That the term "necessary" must be given effect leaves remaining the question of what specific meaning to attribute it. Courts have interpreted the term "necessary" to mean something less than indispensable, but these interpretations have arisen from the use of the term in the Communications Act of 1934 *prior to* the 1996 amendments. The 1996 amendments represented a fundamental philosophical shift in favor of deregulation[9] and the term "no longer necessary in the public interest" must be read in that context.[10] Such is the approach taken by the Supreme Court in *Iowa Utilities Board* and, more recently, by the D.C. Circuit in *GTE Service Corp. v. FCC*. In each of these decisions, the courts interpreted the term "necessary" against the backdrop understanding that Congress intended to reduce regulation.[11] When the 1996 Act employs "necessary" as the standard by which FCC regulation must be justified, courts have

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8 See Erlenbaugh v. United States, 409 U.S. 239, 244 (1972)("[I]ndividual sections of a single statute should be construed together. . . . [T]he rule's application certainly makes the most sense when the statutes were enacted by the same legislative body at the same time."); United States v. Menasche, 348 U.S. 528, 538 (1955); Allen Oil Co. v. Comm'r of Internal Revenue, 614 F.2d 336, 339 (2d Cir. 1980)("a statute must, if reasonably possible, be construed in a way that will give force and effect to each of its provisions rather than render some of them meaningless); U S WEST Communications v. FCC, 224 F.3d 1049, 1053 (10th Cir. 2000).

9 See Reno v. American Civil Liberties Union, 521 U.S. 844, 857 (1997) ("The Telecommunications Act of 1996 was an unusually important legislative enactment. As stated on the first of its 103 pages, its primary purpose was to reduce regulation and encourage "the rapid deployment of new telecommunications technologies.")(citing preamble to Publ. L. 104-104, 110 Stat. 56).

10 See Fox Television, 280 F.3d at 1033 (characterizing Section 202(h) as Congress directing the FCC "to continue the process of deregulation").

11 See, e.g., AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366, 388-90 (1999)(requiring FCC to give effect to the limitation inherent in the word "necessary" under 47 U.S.C. § 251(d)(2)); see also GTE Service Corp. v. FCC, 205 F.3d 416, 422 (D.C. Cir. 2000)("Something is *necessary* if it is *required* or *indispensable* to achieve a certain result.")(emphasis in original).

tended to construe the word *against* Commission regulation.[12] By application, the phrase "no longer necessary in the public interest" in Section 11 must be construed against maintaining the regulations under review. Therefore, the term "necessary" is more akin to "indispensable" or "essential" than it is to "consonant with."

Even if the Commission rejects the position that Section 11 heightens the standard for the retention of rules, it must concede that imposing unnecessary burdens on carriers and introducing market inefficiencies without corresponding social benefits does not serve the public interest. Indeed, this theme has imbued many of the Commission's policy enactments since the passage of the 1996 Act.[13] In many instances, competitive markets provide the most effective regulation and efficient allocation of resources. Yet, many of the Commission's rules unnecessarily increase transaction costs, skew competition in favor of or against particular groups of carriers, duplicate tasks that competitive carriers must complete in other contexts, or otherwise impose outdated requirements lacking in consumer protection or other valid public interest justifications. The Commission can promote the public interest benefits offered by efficiently operating competitive markets through eradication of rules that drain competitive resources or slow responses to competition. CTIA urges the Commission to act quickly to commence its review, on an expedited basis, of *all* regulations affecting CMRS carriers and to fulfill its statutory

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12 See id.; see also RT Communications, Inc. v. FCC, 201 F.3d 1264, 1269 (10th Cir. 2000) (upholding the FCC's preemption of Wyoming statute pursuant to Section 253 as "necessary" and interpreting that term in a manner synonymous with "required," "essential" or "no available alternative").

13 See, e.g., Performance Measurements and Standards for Unbundled Network Elements and Interconnection, CC Docket No. 01-318 *et al.*, *Notice of Proposed Rulemaking*, 16 FCC Rcd 20641 at ¶ 26 (2001)("[W]e recognize that another of the Act's primary goals is to eliminate or avoid unnecessary, duplicative, or otherwise burdensome regulation."); 2000 Biennial Regulatory Review, CC Docket No. 00-175, *Report*, 16 FCC Rcd 1207 at ¶ 84 (2001)("We remain committed to eliminating unnecessary rules and streamlining our procedures to minimize the burden of our regulations on the carriers in the increasingly competitive environment, while safeguarding the public interest.").

mandate to "repeal or modify" any rule that is not "necessary in the public interest." To assist the Commission in this effort, CTIA identifies herein many of the more significant regulations affecting wireless carriers that are no longer necessary and must therefore be repealed or modified.

II. RULES AFFECTING CMRS CARRIERS THAT ARE NO LONGER NECESSARY AND MUST BE REPEALED OR MODIFIED

Nearly all of the rules identified in this section have been the subject of prior petitions or docketed proceedings. In many instances, these rules are the subject of open proceedings, including proceedings that date back to the still uncompleted 2000 Biennial Review. For these open proceedings, where the Commission has the benefit of a full record, the Commission should accelerate its biennial review obligations by applying the Section 11 legal standard described above to the existing record. It would frustrate the Congressional purpose that underlies Section 11 to roll these open proceedings into the 2002 Biennial Review when only the standard of review, and not new facts, dictates their repeal or modification. Thus, for example, the Commission should apply Section 11 to the Part 22 rule changes that are included in the pending 2000 Biennial Review. Not only would it serve no purpose to transfer the review of these challenged rules from the 2000 (and still pending) Biennial Review to the review that is the subject of this Petition, it would offend the clear intent of the Telecommunications Act of 1996 amendments, which added Section 11 to the Communications Act of 1934.

The following regulations affecting CMRS carriers are organized for simplicity in the order they are listed in the Code of Federal Regulations. There are other regulations affecting CMRS carriers, not included on this list, that are no longer necessary, and the Commission must consider repealing or modifying all such regulations during the 2002 Biennial Review.

1. PART 1 -- PRACTICE AND PROCEDURE: SUBPART E -- COMPLAINTS, APPLICATIONS, TARIFFS, AND REPORTS INVOLVING COMMON CARRIERS

The Commission should eliminate Section 1.815 of the Commission's Rules, which requires licensees to file an annual employment report.[14] Section 1.815 duplicates the reports that carriers must file with the federal and state EEO agencies and the annual reporting requirement serves no FCC regulatory purpose. The Commission should eliminate this provision since it is nothing more than a duplicative filing and a needless burden of paperwork.

2. PART I -- PRACTICE AND PROCEDURE: SUBPART F -- WIRELESS TELECOMMUNICATIONS SERVICES APPLICATIONS AND PROCEEDINGS

Under Section 1.923, applicants filing ULS Forms 601 and 603 are required to provide all requested information, including information regarding "pending" "non-FCC litigation."[15] The Commission has repeatedly stated that unless and until there is an adverse judgment, pending litigation is not material to a licensee's qualifications. Requiring information relating to non- FCC litigation results in "offlining" applications, burdening staff, and delaying swift action on routine filings. The question on the ULS Forms 601 and 603 should be deleted, because there is no reason why the collection of such information from carriers is necessary in a competitive market.

Applicants filing ULS Forms 601 and 603 are also required to provide a significant amount of data regarding foreign ownership even when the Commission has already approved

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[14] 47 CFR § 1.815 (requiring each licensee with 16 or more full time employees to file an annual employment report).

[15] *See* 47 CFR § 1.923 (stating "Applications must contain all information requested on the applicable form and any additional information required by the rules in this chapter"); 47 CFR § 1.923(b)(3)(ii) (describing applicant information on litigation: title of the proceeding, the docket number, and any legal citations).

such ownership. Thus, the foreign ownership question on ULS Forms 601 and 603 is an unnecessary and burdensome reporting requirement that has little, if any, correlation to the FCC's Section 310(b) analysis required *prior to* approval of such ownership. Accordingly, the question should be deleted from ULS Forms 601 and 603, and replaced with a simple yes/no question as to whether the applicant complies with Section 310(b).

The Commission also should amend Section 1.924(d), which requires a CMRS provider to obtain approval for wireless facilities within the FCC Quiet Zone Rules for the Arecibo Observatory.[16] The Commission should eliminate this unnecessary interval of FCC approval, particularly since the Observatory is willing to provide written approval for wireless modifications.[17] As explained in the 2000 Biennial Review proceeding concerning Quiet Zones application procedures, the provision should be eliminated because it creates unnecessary delay in the provisioning of service in Puerto Rico.[18]

Section 1.935 requires applicants to obtain Commission approval of agreements to withdraw applications, petitions, informal objections or other pleadings against an application.[19] The Commission's approval process for such agreements is often the cause of lengthy delays. Moreover, the approval of such agreements is unnecessary in a competitive CMRS market,

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16 47 CFR § 1.924(d).

17 *See In the Matter of Review of Quiet Zones Application Procedures Notice of Proposed Rulemaking,* FCC 01-333, WT Docket No. 01-319, Biennial Review 2000 Comments of Alloy LLC ("Cingular Comments") at 8 (filed Jan. 22, 2002).

18 *See id.*

19 47 CFR § 1.935 (Agreements to dismiss applications, amendments or pleadings.).

particularly when the Commission has the authority to request documents in specific cases. Thus, Section 1.935 should be eliminated.

3. PART 1 -- PRACTICE AND PROCEDURE: SUBPART Q -- COMPETITIVE BIDDING PROCEEDINGS

Section 1.2105 requires applicants to submit a Short-Form application providing detailed information regarding the ownership of the applicant.[20] Such ownership information is unnecessary because the information will be relevant only if the applicant is a high bidder, and at that time the applicant is required to submit a Long-Form application disclosing ownership data. Section 1.2105 places a burden of needless paperwork on auction applicants.

Section 1.2111(a) requires applicants for transfers of control or assignments of licenses obtained through competitive bidding to file certain transaction documents and other materials with the Commission.[21] This requirement, however, is duplicative and unnecessary given that the Commission already has separate rules governing unjust enrichment, which are sufficient to ensure that auction winners benefiting unfairly from bidding credits disgorge such benefits.[22] Furthermore, the scope of the current rule is so broad that it applies to all applicants, regardless whether the transfer of control or assignment involves a license obtained pursuant to the FCC's eligible designated entities rules.

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20 47 CFR § 1.2105(a)(2)(ii)(B) (requiring applicants to submit applicant ownership information as set forth in § 1.2112 in the Short-Form application).

21 47 CFR § 1.2111(a).

22 *See e.g.*, 47 CFR § 22.943(b).

4. PART 1 -- PRACTICE AND PROCEDURE: SUBPART I -- PROCEDURES IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 ("NEPA")

To ensure that market forces continue to spur growth in CMRS services as well as stimulate the deployment of competitive broadband wireless services, the Commission must streamline NEPA compliance and review procedures imposed on CMRS providers. Moreover, it is critical that the Commission implement these streamlined procedures in a timely manner. As demonstrated in CTIA's Biennial Review 2000 Comments,[23] the FCC's existing NEPA procedures cannot be squared with respect to the prompt and reasonable resolution of issues related to the siting of wireless facilities on or near historic properties. Six years after the passage of the Telecommunications Act, the Commission and other Federal agencies persist in fostering an unwieldy bureaucracy that cannot respond effectively and quickly to market and government demands for the swift deployment of competitive wireless services.[24]

Wireless carriers compete for subscribers based on coverage area, network quality and network reliability. These dynamics are contingent on the timely and cost effective manner in which carriers can construct and site wireless facilities. It is imperative that the Commission streamline the NEPA process.

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[23] *See Public Notice,* Biennial Review 2000 Staff Report Released, FCC 00-346 (rel. Sept. 19, 2000), CC Docket No. 00-175, Biennial Review 2000 Comments of the Cellular Telecommunications Industry Association ("CTIA Biennial Review 2000 Comments"), at 11-14.

[24] While the Commission, the Advisory Council on Historic Preservation ("ACHP") and the National Council of State Historic Preservation Officers ("NCSHPO") adopted the Nationwide Collocation Programmatic Agreement ("Agreement") in March 2001, it took the Commission over ten (10) months to issue the requisite guidance document instructing CMRS service providers and SHPOs on how they should implement the Agreement. Consequently, many SHPOs refused to implement the Agreement until the FCC issued its guidance thereby using the Agreement as a sword, rather than as a shield, against unreasonable delays in the siting process.

Section 1.1307(a)(4) defines actions that may have a significant environmental effect for which Environmental Assessments (EAs) must be prepared.[25] In its recent efforts to streamline the Section 106 process, the Commission recognized the futility and significant delays in deployment caused by its practice of requiring applicants to file an Environmental Assessment ("EA") even when there is a finding of "no effect" or "no adverse effect."[26] Accordingly, the Commission recently adopted a policy whereby it no longer requires applicants to file an EA with the Commission under Section 1.1307(a)(4) if a State Historic Preservation Officer ("SHPO") has concurred in a proposed finding of "no effect" or "no adverse effect" on a property listed or eligible for listing in the National Register. Furthermore, the Commission has streamlined Section 1.1307(a)(4) by limiting its scope wherein the rule does not apply to collocations that are exempted under the Nationwide Collocation Programmatic Agreement. To ensure the consistent regulatory treatment of a "no effect" or "no adverse" finding, the Commission should amend Section 1.1307(a)(4) to reflect this change in practice.

In 47 CFR § 1.1306 Note 1, the Commission supports and encourages the use of existing buildings, towers or corridors as an environmentally desirable alternative to the construction of new facilities, *i.e.*, collocation. While the Commission's rules generally provide for an exclusion for "for the mounting of antenna(s) on an existing building or antenna tower," this exclusion is

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25 47 CFR § 1.1307(a)(4)

26 *Public Notice,* Wireless Telecommunications Bureau and the Mass Media Bureau Announce the Release of a Fact Sheet Regarding the March 16, 2001 Antenna Collocation Programmatic Agreement, DA 02-28, rel. Jan. 10, 2002, 10 ("Fact Sheet") (http://wireless.fcc.gov/siting/environment.html#collocation). *See also Public Notice,* Wireless Telecommunications Bureau Announces Execution of Programmatic Agreement with Respect to Collocating Wireless Antennas on Existing Structures ("Collocation Programmatic Agreement"), DA 01-691, rel. March 16, 2001.

not applicable to historic preservation considerations.[27] In an effort to streamline the Section 106 process, the Collocation Programmatic Agreement exempts all collocations of antennas on pre-existing towers or structures from Section 106 review, unless one of the exceptions set forth in the Agreement applies. While the Agreement is an initial step in streamlining the Section 106 process, it stops short of "grandfathering" pre-existing towers and structures that have not undergone Section 106 review prior to March 16, 2001. Thus, the underlying tower or structure that supports the collocation could still be challenged under the Section 106 review process, independent of the collocation process. Such a result undermines the Commission's policy and support for collocation. Furthermore, it significantly reduces any incentive for carriers and public safety agencies to collocate on the thousands of towers or structures built prior to March 16, 2001.[28]

It is not economically feasible for the Commission, the ACHP or SHPOs to conduct a Section 106 review of the large number of commercial, government and public safety towers that were erected prior to March 16, 2001, but have not undergone Section 106 review. These pre-existing towers and structures are built and permit commercial, government and public safety entities to provide services to the public. Requiring applicants to dismantle or make major modifications to the towers or other structures would not serve the public interest. Accordingly, CTIA recommends that the Commission exempt towers or structures built prior to March 16, 2001, from the Section 106 review process.

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[27] 47 C.F.R. § 1.1306(b)(3), Note 1.

[28] According to CTIA's Semi-Annual Wireless Industry Survey, there were more than 104,000 cell sites that were commercially operational prior to March 16, 2001. This number does not include government and public safety cell sites or cell sites owned by tower companies. *See* CTIA's Wireless Industry Indices: Semi-Annual Data Survey Results, at 139 (rel. Dec. 2001).

Pursuant to 47 CFR § 1.1308(b) NOTE 2, the Commission must solicit the comments of the Department of Interior with respect to threatened or endangered species or designated critical habitats, and the SHPO and ACHP with respect to historic properties, in accordance with their established procedures. While CTIA, the ACHP, the Commission, and the NCSHPO have worked cooperatively to streamline the SHPO and ACHPs review and comment process, there has been very little progress to date. There are far too many SHPOs that prolong the Section 106 review process well beyond the 30-day comment period established under the ACHP's Section 106 procedural rules.[29] The FCC's failure or refusal to hold SHPOs to the requisite period of time has resulted in significant delays in the FCC's approval of applications seeking to construct wireless facilities on or near historic properties. Moreover, the SHPO's ineffective and arbitrary implementation of the FCC's and ACHP's procedures and deadlines have significantly impeded the timely review of pending applications. Too often, SHPOs implement and interpret the FCC's and ACHP's streamlined procedures and time schedules as they deem appropriate. These inconsistent interpretations of federal rules, and inconsistent local implementation efforts often vary within the same office or from one state to another.[30]

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29 *See* 36 CFR § 800.3(c)(4).

30 *See, e.g.*, Delaware State Historic Preservation Office, *Guidelines for Architectural and Archaeological Surveys in the State of Delaware* (visited Dec. 19, 2001) <http://www.state.de.us/shpo/survey%20manual%20for%20draft%20circulation.txt>; Oregon State Historic Preservation Office, *Section 106 Cell Tower Guidelines* (visited Dec. 19, 2001) <http://shpo.prd.state.or.us/images/pdf/shpo_sectl06_celltower.pdf>; New Mexico State Historic Preservation Office, *Guidelines for Evaluating Proposed Telecommunications Facilities under Section 106 of the National Historic Preservation Act* (visited Dec. 19, 2001), <http://www.nmmnh-abq.mus.nm.us/hpd/about/contents/forms/cellguidelines.pdf>. *See also,* Florida Department of State Division of Historical Resource, *Guidelines for Section 106 Review of Proposed Cellular Tower Locations* (visited Dec. 19, 2001), <http://dhr.dos.state.fl.us/bhp/compliance/106_FCCGuidelines2.pdf>; Missouri Department of Natural Resources Historic Preservation Program (HPP), *Section 106 Project Information Form, HPP 106 Survey Memo Form, and A Guide to the Completion of the HPP 106 Survey Memo,* (visited Dec. 19, 2001), <http://www.mostateparks.com/hpp/sectionrev.shtm>.

Such varied interpretations and implementation result in inconsistent determinations and create significant uncertainty for wireless telecommunications companies attempting to site on or near historic properties. Consequently, the FCC's regulations generally have had a dilatory effect, which contravenes the goals, and policies the Commission and the ACHP attempted to achieve by streamlining their processes to facilitate timely Section 106 review.

Accordingly, CTIA recommends that the Commission eliminate its practice of allowing SHPOs to delay their response to the Commission's solicitation of comments. Rather, the Commission must enforce the 30-day time limit for a SHPO's response. While many SHPOs contend that they do not receive sufficient documentation from an applicant to provide a timely review, this contention can be quickly resolved by the Commission adopting the Standard Documentation Guidelines developed by the ACHP's Tower Working Group. Such action would be a significant step in streamlining the FCC's Section 106 process.[31]

There are several major issues associated with the FCC's policies and procedures governing the solicitation of SHPO review and comments that significantly hinder the construction and buildout of the wireless infrastructure. While the Section 106 historic review process requires applicants to consult with State Historic Preservations Officers ("SHPOs") in determining whether a siting project may have a significant adverse impact on the historic property, there are no limitations on the SHPOs' review authority, nor any standards upon which SHPOs must base their objections. As a result, there are no means of reviewing the reasonableness of SHPO objections. SHPOs are free to pick any point on the map, between one

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[31] The Standard Documentation Guidelines provide SHPOs with a checklist of appropriate documents and data that an applicant should provide for a Section 106 review. Once the SHPO receives the appropriate documentation from the applicant, the 30-day review period commences. Hence, the SHPO's receipt of the documentation is the objective basis for triggering the 30-day SHPO review.

inch and 100 miles, to object to a proposed siting project. The fact that SHPO review lacks adequate standards is amply demonstrated in the several examples that CTIA provided in its comments to the ACHP's proposed Section 106 rules and NTIA's inquiry concerning broadband deployment.[32]

Too often, wireless carriers encounter significant delays in the siting process because the eligibility of a historic property is undetermined or has been pending for a considerable period of time. While the SHPO is responsible for maintaining and ensuring that the state's register of historic properties is current, wireless carriers often encounter instances in which a state register is outdated or missing significant information concerning eligible historic property. It is very difficult for carriers to assess the impact of a proposed site when the information concerning the eligibility of a historic property is uncertain or the information concerning a specific property is outdated or incomplete.

This issue can be addressed by providing SHPOs with an incentive to address the eligibility of a historic property in a timely and reliable manner. There should be a streamlined regulatory process that creates a rebuttable presumption that a carrier has met its obligations under Section 106 by making reasonable efforts to determine whether the siting of a wireless facility on or near a historic property has a significant adverse effect, unless the SHPO has previously made a formal determination concerning the eligibility of a historic property and that determination is duly recorded in the appropriate public files.

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32 *See Request for Comments on Deployment of Broadband Networks and Advanced Telecommunications,* Department of Commerce, National Telecommunications and Information Administration, *Notice,* Docket No. 011109273-1273-01 (Nov. 10, 2001); Comments of the Cellular Telecommunications & Internet Association, 22-23 (filed Dec. 20, 2001). *See also* Comments on Proposed Rules to Revise 36 CFR Part 800 *et. seq.*, "Protection of Historic Properties" Filed on Behalf of the Cellular Telecommunications Industry Association, 18-20, http://www.wow-com.com/filing/pdf/ctia090100.pdf.

The FCC's and the ACHP's current Section 106 rules and procedures do not provide appropriate incentives for carriers to site wireless facilities within areas that fall within certain categorical exclusions or exempted federal undertakings.[33] While the FCC supports the desire of the wireless industry, the ACHP, and the National Council of State Historic Preservation Officers to address these impediments in a Programmatic Agreement, there is significant concern that the Federal agencies will not develop and implement the Programmatic Agreement in a reasonable and timely manner.

5. PART 6 -- ACCESS TO TELECOMMUNICATIONS SERVICE, TELECOMMUNICATIONS EQUIPMENT AND CUSTOMER PREMISES EQUIPMENT BY PERSONS WITH DISABILITIES; AND PART 7 -- ACCESS TO VOICEMAIL AND INTERACTIVE MENU SERVICES AND EQUIPMENT BY PEOPLE WITH DISABILITIES

The wireless industry has a strong interest in ensuring that its customers with disabilities have access to advanced wireless services. Competition, not regulation, offers the best means of bringing wireless technological innovations and solutions to people with disabilities, and ensuring that they are not relegated to relying on antiquated technology to meet their needs. To bring the benefits of emergency and advanced telecommunications to people with disabilities, the Commission has imposed several regulatory mandates under Part 6, Part 7, and

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[33] While the Commission has indicated that the construction and registration of towers are federal undertakings, CTIA strongly recommends that the Commission revisits this decision, particularly in light of the evolution of wireless services since 1988, *i.e.*, the deployment of PCS and ESMR services, wireless information services, broadband and advanced wireless services. In *National Mining Ass'n v. Slater*, 167 F.Supp.2d 265 (D.D.C. 2001), the Court determined that it is the Federal agency, not the ACHP, that has the authority to determine what agency activities constitute a federal undertaking under the National Historic Preservation Act. As demonstrated in Sprint PCS' Petitions for Reconsideration of the Nationwide Collocation Programmatic Agreement and Verizon Wireless' Comments filed a year ago, the Commission allocates and licenses spectrum to wireless carriers and does not license or issue construction permits for the siting of wireless facilities. Thus, it is highly questionable whether the siting of wireless facilities on or near historic properties even constitutes a federal undertaking to bring such activities within the purview of the Section 106 process. *See In the Matter of Nationwide Programmatic Agreement for the Collocation of Wireless Antennas,* DA 00-2907, Sprint PCS Petition for Reconsideration and Clarification (filed May 2, 2001); Comments of Verizon Wireless (filed May 14, 2001).

Section 20.18(c) of the Commission's Rules. However, the unintended consequence of such mandates is that the Commission continues to rely on regulatory fiat, rather than competition, to bring wireless technological innovations and solutions to consumers with disabilities. Indeed, the underlying assumption is that consumers benefit more from heavy-handed regulation than the proven track record of innovations that characterize competitive wireless services. Moreover, the Commission's mandates require CMRS carriers to invest significant resources to develop "backwards compatible" technical solutions in order to achieve accessibility, *i.e.*, making advanced digital technologies compatible with antiquated technologies, rather than supporting a regulatory philosophy and process that encourages consumers with disabilities to migrate from antiquated technologies to advanced digital technologies that offer the functions and benefits they desire.[34] This regulatory philosophy has resulted in inefficient and short-term solutions that do not meet consumers' needs nearly as well as new technologies. SMS messaging is just one example of how wireless information services are providing people with disabilities access to telecommunications and emergency services.[35] Accordingly, the Commission should eliminate

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[34] *See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems,* CC Docket No. 94-102, *Fourth Report and Order,* 15 FCC Rcd. 25216 (2000). *See also Public Notice,* Wireless Telecommunications Bureau Seeks Comment on Request for Temporary Waiver of Deadline By Which Digital Wireless Systems Must Be Capable of Transmitting 911 Calls from TTY Devices, CC Docket No. 94-102, 17 FCC Rcd. 5083 (2002) (seeking comment on three waiver requests from wireless service providers to extend the deadline to upgrade their systems to achieve TTY compatibility and to integrate TTY compatibility with the PSAP).

[35] In January 2002, a local police department in London introduced a mobile phone text messaging service to help people who are deaf or hard of hearing contact police in an emergency. A survey conducted in conjunction with the British Institute of the Deaf "revealed that 98 percent of hearing impaired people use text messages to communicate, while 85 percent said they would find the link with the police useful, and 83 percent of those surveyed said they would be keen to sign up to the service." *See* Samantha Clarke, *Police Add Message Texting to Armoury; Hard of Hearing Will Find It Much Easier to Contact Officers,* COVENTRY EVENING TELEGRAPH, Dec. 29, 2001, at 16.

See also Jane Bird, *When It's Handsets to the Rescue,* THE LONDON TIMES, Mar. 28, 2002; *Deaf Driver to Text AA,* GLASGOW EVENING TIMES, July 16, 2001, at 18 (announcing a new system that allows motorists who have speech or hearing difficulties to contact an auto club directly when their cars break down on a highway with the use of text messaging from mobile phones). Vandana Sinha, *Instant*

accessibility rules that impose backward compatibility solutions on advanced digital technologies.

The convergence of telecommunications and information services provides competitive alternatives that negate the need for disparate rules for similar services that fall under the very different Title II and Title I requirements. As the Commission establishes the appropriate regulatory treatment for information and broadband services that are not covered under Title II, *i.e.*, voice over IP, text messages (including SMS offered by CMRS carriers), and unlicensed ("wi-fi") wireless services connected to a cable modem, it should forbear from regulations that may thwart the development of innovative services. To the extent that competitive alternatives exist, the Commission should treat telecommunications services and close-substitute information services alike, and not apply Parts 6 and 7 of the Commission's Rules to these similar services.[36] The Commission's recent authorization of cost recovery for Internet Protocol ("IP") relay service is one step towards meeting the Commission's goals of providing such benefits to the disabilities community.[37]

Messaging Aids Communication for Disabled People, THE VIRGINIAN-PILOT, Nov. 26, 2001 (noting that text messaging "opened up a whole new world" for a 17-year old student who is deaf. "It enabled us [his parents] to let him move around freely. . . . He feels a sense of independence.")

"In the past year [2000-2001] the number of SMS messages sent worldwide increased fivefold, to 200 billion. In December [2000] alone, Germans sent a staggering 1.8 billion." Daniel Rubin, *Messaging Connects the Deaf to the Mobile Phone Universe,* SAINT PAUL PIONEER PRESS, Sept. 17, 2001, at EI (underscoring the widespread use of SMS messaging over mobile phones in Europe and Asia, and how people with hearing disabilities are embracing the technology.) *See also SMS Allows Hearing-Impaired Enjoy Mobile Lifestyle,* CHANNEL NEWSASIA, Aug. 10, 2001.

36 The Commission also should modify 47 CFR § 51.100(a)(2), which prohibits telecommunications carriers from installing the most advanced new technologies and capabilities unless they comply with Section 255 and 256 of the Act, to the extent there are competitive services being offered by non-telecommunications carriers.

37 *See News Release,* FCC Authorizes Recovery of Costs for New Technology for TRS Users, CC Docket No. 98-67 (rel. Apr. 18, 2002).

6. PART 17 - CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES

In the 2000 Biennial Review, CTIA, among others, urged the Commission to streamline Part 17 of its rules, which sets forth the requirements for construction and coordination of wireless communications facilities.[38] While the Commission has recognized that some of its Part 17 rules warrant modification,[39] the Commission has failed to synchronize the FAA and FCC regulations.[40] The Advisory Circulars, the FAA recommendations for painting and lighting of antenna structures that are mandatory under the FCC Rules, impose obligations with respect to notification of modifications that conflict with Section 17.23.[41] Furthermore, the Commission should work with the FAA to adopt the FCC's 20-foot rule exemption, a proposal made in the 2000 Biennial Review.[42] Until the Commission takes further action, the tower siting rules in Part 17 will continue to be misleading and confusing.

7. PART 20 -- 911 SERVICES

The Commission should modify Section 20.18 to reflect changes it has made to its rules with respect to the deployment of Phase I and Phase II Enhanced 911 ("E-911") services. Specifically, the Commission's cost recovery rules now provide for a negotiation process

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38 *See* CTIA's Biennial Review 2000 Reply Comments; Cingular Biennial Review 2000 Comments at 7; USTA Biennial Review 2000 Comments at 9.

39 *See* Biennial Review 2000 Staff Report, Appendix IV, at 21 (stating that certain rules "could be modified or eliminated without compromising the public safety goals embodied in this rule part.")

40 *See id.* at nn. 47-49 (stating that Sections 17.45, 17.48, 17.53, 17.54, 17.4, 17.57 warrant review).

41 *See* CTIA's Biennial Review 2000 Reply Comments at 4-6.

42 *See* Cingular's Biennial Review 2000 Comments at 7. *See also* 47 CFR § 17.14(b).

between carriers and PSAPs that is not consistent with Section 20.18.[43] The Commission should modify the language requiring carriers to deploy network-based or handset-based location technology within six months of a PSAP request to permit carriers and PSAPs to negotiate a mutually-agreed upon implementation period. In addition, the Commission should modify its rules to affirm that the six-month implementation period is tolled while a PSAP assembles supporting documentation or during a "readiness dispute."[44]

The Commission also should amend its E-911 rules to account for the widespread use of non-initialized (or more properly, non-subscribed) phones. While the Commission's E-911 mandate requires CMRS carriers to "transmit all wireless 911 calls without respect to their call validation,"[45] the Phase II accuracy requirements and deployment measures required under Section 20.18 fail to account for calls from non-subscribed calls to a PSAP that cannot be validated. As CTIA stated in comments responding to the Commission's *Further Notice of Proposed Rulemaking*, the Commission must clarify its 911 rules to reflect the technical obstacles to providing the enhanced features of E911 to non-subscribed handsets.[46]

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43 *See* 47 CFR § 20.18(d) (stating that a licensee must provide Phase I service "within 6 months of a PSAP request"); 47 CFR § 20.18 (f), (g) (stating that a licensee must provide Phase II service "within 6 months of a PSAP request").

44 *See* CTIA Comments on Cingular Petition for Reconsideration, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems,* CC Docket No. 94-102 (Jan. 18, 2002).

45 47 CFR § 20.18(b).

46 *See* CTIA's Comments and Reply Comments on the Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Further Notice of Proposed Rulemaking*, CC Docket No. 94-102 (Aug. 8, 2001).

Finally, the Commission should modify sections 20.18(f), (g), (h) and (i) of the Commission's rules[47] to clarify that any provider of commercial mobile services subject to those sections may choose to comply with the requirements of any FCC order granting a waiver of these sections.

8. PART 22, SUBPART C -- OPERATIONAL AND TECHNICAL REQUIREMENTS; AND SUBPART H -- CELLULAR RADIOTELEPHONE SERVICE

The Commission still has not acted on its 2000 Biennial Review staff recommendations to conduct a comprehensive review of the cellular service rules in Part 22.[48] As the Commission has acknowledged, the wireless marketplace is drastically different than what it was when the Part 22 rules were promulgated, and the Commission should eliminate unnecessary cellular rules in view of the introduction of new technologies and the increased competition between wireless carriers.

In the last Biennial Review, the Commission committed to "undertake a comprehensive review of the Part 22 cellular rules as well as other portions of Part 22 that have not received recent scrutiny," based on the fact that CMRS providers, including those licensed under Part 22, "operate in an environment that is marked by significant and increasing competition in mobile telephony."[49] The Commission, however, has failed to deliver on its commitment to review the Part 22 rules. There is no need to address the pending issues in the 2002 Biennial Review; the

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47 47 C.F.R. 20.18(f), (g), (h), and (i).

48 *See* Staff Report at 32.

49 *See* Staff Report at 39; *See id.* at 38.

Commission should resolve the following issues as part of the still-pending 2000 review by considering whether these requirements are indispensable to the public interest.

CTIA urges the Commission to adhere to a policy of regulatory parity and eliminate unnecessary regulatory burdens imposed upon cellular service providers. For example, Section 22.303 requires cellular providers to mark every transmitting facility with a station call sign,[50] and Section 22.367 imposes a vertical polarization requirement on cellular licensees[51] -- obligations that are not imposed upon other CMRS providers. CTIA also urges the Commission to transfer the management of the assignment of cellular system identification numbers (SIDs), *i.e.*, to CTIA's CIBERNET subsidiary, and amend Section 22.941 accordingly.[52] The Commission also should clarify Section 22.919 to allow carriers to use alternative mechanisms to the Electronic Serial Numbers ("ESN"), *i.e.*, SIM cards. In the alternative, the Commission should eliminate the provision since there is no equivalent of ESN requirement for broadband PCS.[53] Finally, the Commission should eliminate the Cellular Cross-Interest Rule for Rural Service Areas ("RSA") as it has done for Metropolitan Statistical Areas ("MSA").[54] As Cingular Wireless and Dobson Communications stated in their recent Petitions for Reconsideration, a

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50 47 CFR § 22.303. *See also* Verizon Wireless Biennial Review 2000 Comments at 8 (explaining that Part 22 should allow either vertical or horizontal polarization).

51 47 CFR § 22.367(a). *See also* Verizon Wireless Biennial Review 2000 Comments at 8.

52 47 CFR § 22.941. *See* CTIA Biennial Review 2000 Comments and Reply Comments at 7-8.

53 47 CFR § 22.919.

54 *See* 47 CFR § 22.942 (limiting the interests licensees can hold in channel blocks in an area).

separate rural cross ownership rule is not needed -- the case-by-case competitive analysis applied to all other CMRS transfers will protect the public interest.[55]

While CTIA applauds the Commission's efforts to streamline the licensing process for wireless carriers and its establishment of a Universal Licensing System ("ULS") database,[56] the Commission has overlooked certain regulations, such as the requirement in Section 22.953 to file both full-sized maps and reduced maps with minor modifications, that are inconsistent with the policies of ULS implementation. Accordingly, the Commission should eliminate such regulations.[57]

9. PART 24 -- PERSONAL COMMUNICATIONS SERVICES, SUBPART B -- APPLICATIONS AND LICENSES

Principles of regulatory symmetry require the Commission to treat comparable services the same and that any difference in regulation must be based upon relevant differences in circumstances or competition. In 1999, CTIA asked the Commission in a Petition for Rulemaking to amend certain provisions of Part 24 to make the PCS license renewal process consistent with the cellular renewal process.[58] CTIA raised this issue in the Commission's 2000

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55 *See* Petitions for Reconsideration of Action in Rulemaking Proceeding Report No. 2540, filed by Dobson Communications Corporation, Western Wireless Corporation, and Rural Cellular Corporation, and the Petition for Reconsideration filed by Cingular Wireless LLC, WT Docket No. 01-14 (Feb. 13, 2002).

56 *See* Biennial Regulatory Review -- Amendments of Parts 0, 1, 13, 22, 24, 26, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, *Report and Order,* WT Docket No. 98-20, 13 FCC Rcd. 2102 (1998); Biennial Regulatory Review -- Amendments of Parts 0, 1, 13, 22, 24, 26, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, *Memorandum Opinion and Order on Reconsideration,* WT Docket No. 98-20, 14 FCC Rcd. 11476 (1999).

57 47 CFR § 22.953.

58 *See* CTIA's Petition for Rulemaking to Extend the Part 22 Cellular Renewal Rules to the Part 24 Personal Communications Service (Dec. 21, 1999) (stating that when the Commission adopted the PCS renewal rules it expressly stated that it was adopting a ten year license term and "provisions regarding renewal

Biennial Review proceeding, and raises it again in this Petition. Section 24.16 of the PCS rules does not contain the same two-step process for resolving renewal challenges that is included in the cellular renewal rules.[59] Since the issue continues to be relevant, the Commission should modify the rules governing the PCS license renewal process as part of the still-pending 2000 review and in accordance with the legal standard of review that rules not indispensable to the public interest shall be modified or repealed.

10. PART 43 -- REPORTS OF COMMUNICATIONS COMMON CARRIERS AND CERTAIN AFFILIATES

The Commission has taken significant steps to streamline the international reporting requirements found in Part 43 of its Rules.[60] The Commission reduced the regulatory burden on non-dominant carriers by clarifying the contract filing requirement in Section 43.51[61] and Section 20.15(d) for CMRS providers. Consistent with the Commission's deregulatory approach, and the increased competition in international markets, the Commission should eliminate Section 43.53, a reporting requirement for the transmission or reception of international telegraph communications.[62] As demonstrated by parties commenting in the 2000

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expectancy that currently apply to the cellular service"), *citing* Amendment of the Commission's Rules to Establish New Personal Communications Services, *Second Report and Order*, Gen. Docket No. 90-314 at ¶ 131 (1993).

59 *See* 47 CFR § 24.16 (PCS renewal process); 47 CFR §§ 22.935-40 (Cellular renewal process).

60 Verizon Wireless, Cingular, and others supported the Commission decision to commence a proceeding to consider the international reporting requirements. *See* Verizon Wireless Comments at 2; Cingular Comments at 3, filed October 10, 2000.

61 The Commission amended Section 43.51 so that the reporting requirement applies solely to carriers classified as dominant for reasons other than foreign affiliation; and carriers, whether classified as dominant or non-dominant, contracting directly for services with foreign carriers that possess market power.

62 47 CFR § 43.53; 43.61; *see* 47 CFR § 63.21 (below).

Biennial Review proceeding, this provision is no longer necessary, and the issue remains ripe for decision.

The Commission also should eliminate Section 43.61, which requires carriers to report actual traffic and revenue data for international traffic and overseas traffic (between the United States and U.S. territories), as a duplicative obligation to carriers holding Section 214 authorizations.[63] Furthermore, the Commission should eliminate the International Circuit status report requirement in Section 43.82 since the data submitted on a circuit basis is minimal in comparison to the traffic provided by facilities-based and wireline-based international carriers.[64]

11. PART 52 -- NUMBERING

The Commission has assigned abbreviated dialing codes, or N11 service codes, to enable callers to connect to a location that otherwise would be accessible only via a seven or ten-digit telephone number.[65] CTIA strongly urges the Commission to modify its existing rules for these services to allow the competitive offering of 211-, 311- and 511-services.

As explained in CTIA's Petition for Rulemaking, the Commission's mandate for 511 travel services provided by "a governmental entity" inhibits carriers from competing in these

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63 47 CFR § 43.61.

64 47 CFR § 43.82.

65 The Commission has established the following NII code-assignments for the eight NII codes: 211: Assigned for community information and referral services; 311: Assigned nationwide for non-emergency police and other government services; 411: Unassigned but used virtually nationwide by carriers for directory assistance; 511: Assigned for traffic and transportation information; 611: Unassigned, but used broadly by carriers for repair service; 711: Assigned nationwide for access to Telecom Relay Services; 811: Unassigned, but used by local exchanged carriers for business office use; 911: Unassigned, but mandated by Congress for use nationwide for emergency services.

services and from designing a service based on customer demand.[66] The 511-experiment during the Salt Lake City Olympics has only reinforced these concerns. After turning up 511 service for the Olympic events, a major wireless received less than thirty 511-calls in Utah during the six week Olympic period. In a recent Order, the Commission committed to reexamine in 2005 its assignment of the 511 and 211 service codes, access to traveler information services and access to community information and referral services.[67] The Commission should expedite this review and modify its rules to account for competitive CMRS implementation.

12. PART 52, SUBPART C -- NUMBER PORTABILITY

Notwithstanding the Commission's recent decision addressing Verizon Wireless Petition for Forbearance (filed pursuant to Section 10 of the Communications Act), the Commission should apply Section 11's indispensable standard, and eliminate the local number portability ("LNP") mandate for CMRS carriers.[68] The FCC imposed the portability requirement upon CMRS providers with no showing of competitive justification and improperly linked the ability of wireless carriers to port with the technical solution required for thousands- block number pooling.[69] CTIA again urges the FCC to eliminate from the LNP mandate.

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66 CTIA's Petition for Reconsideration, CC Docket No. 92-102 (March 12, 2001).

67 *See* Petition by the United States Department of Transportation for Assignment of an Abbreviated Dialing Code (N11) to Access Intelligent Transportation System (ITS) Services Nationwide; The Use of N11 codes and Other Abbreviated Dialing Arrangements, *Third Report and Order and Order on Reconsideration*, CC Docket No. 92-105 (July 31, 2001) at ¶ 53 (stating that the "Commission shall reexamine the deployment of 511 for access to traveler information services, and of 211 for access to community information and referral services five years after the effective date of this *Third Report and Order*).

68 *See* Verizon Wireless Petition for Forbearance, WT Docket No. 01-184 (filed August 2, 2001) ("Verizon Forbearance Petition").

69 *See* Verizon Forbearance Petition at 15-30, Appendix A.

13. PART 63; SECTION 63.21 -- CONDITIONS APPLICABLE TO ALL INTERNATIONAL SECTION 214 AUTHORIZATIONS

As explained above, the Commission should eliminate Section 63.21, which requires carriers holding Section 214 authorizations to file international interexchange service reports, or a Section 43.61 report.[70] In the 2000 Biennial Review proceeding, Verizon Wireless explains that Section 63.21, which forces carriers to file annual reports of overseas traffic for all international Section 214 authorizations, has neither been justified by the Commission as necessary in the public interest nor is it beneficial.[71] In the alternative, the Commission should modify the rule by narrowing the scope of Section 43.61 and clarify that only facilities-based carriers are required to file Section 43.61 reports.

14. PART 90 -- PRIVATE LAND MOBILE RADIO SERVICES -- SUBPART H -- POLICIES GOVERNING THE ASSIGNMENT OF FREQUENCIES

Section 90.175 sets forth the general frequency coordination requirements for licensees regulated by Part 90 of the Commission's Rules. Section 90.175(i)(8)[72] exempts applications for certain frequencies listed in the Specialized Mobile Radio ("SMR") tables contained in Sections 90.617 and 90.619 of the Commission's Rules.[73] Although Sections 90.617 and 90.619 specifically list the "Upper 200" and "Lower 80" auctioned-over SMR 800 MHz frequencies, SMR "General Category" frequencies (channels 1-150) are not listed in either rule section. Rather, the SMR "General Category" frequencies are listed separately in Section 90.615 of the

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70 47 CFR § 63.21(d).

71 *See* Verizon Wireless Comments at 6 (stating "there is no valid regulatory purpose that justifies requiring international CMRS resellers to file the Section 43.61 report").

72 47 CFR § 90.175(i)(8).

73 47 CFR §§ 90.617 and 90.619.

Commission's Rules.[74] Due to this apparent oversight, Section 90.175 of the Rules continues to require frequency coordination for applications involving modification of SMR "General Category" licenses even though the rationale for such coordination of this auctioned-over band has ended. Therefore, the Commission should clarify subparagraph (8) of Section 90.175(i) to include a reference to Section 90.615 of the Rules. Additionally, the Commission should clarify Section 90.175(i) to specifically exclude applications only deleting a frequency from coordination. The deletion of all frequencies from a license (*i.e.*, canceling a license) does not require coordination, and with the implementation of the Commission's Universal Licensing System coordination of frequency deletions is unnecessary and unduly burdensome.

15. PART 90 -- PRIVATE LAND MOBILE RADIO SERVICES -- SUBPART S -- REGULATIONS GOVERNING LICENSING AND USE OF FREQUENCIES IN THE 806-824, 851-869, 869-901, AND 935-940 MHZ BANDS

Subpart S of the Commission's Rules contains a number of provisions that are unnecessary, redundant or obsolete. Section 90-621(b)(5) of the Rules permits co-channel licensees to consent to separation between systems less than specified in the Short-Spacing Separation Table contained in 90.621(b)(4)[75] provided the consenting licensees certify their systems is constructed and operational. This construction certification is duplicative of other constructions requirements and unnecessarily increases delays and reduces spectrum flexibility.

Section 90.629(e) of the Commission's Rules states that as of March 18, 1996, SMR systems are no longer eligible for extended implementation construction periods and provided for a reporting requirement for existing SMR licensees to "rejustify" their extended

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[74] 47 CFR § 90.615.

[75] 47 CFR § 90.621(b)(4) and (5).

implementation authorizations in 1996.[76] The Wireless Telecommunications Bureau approved many of the rejustification filings in 1997[77] and issued its final Memorandum Opinion and Order in 1999.[78] Therefore, this section of the Commission's Rules is now obsolete and should be eliminated.

Section 90.631(i) of the Commission's Rules is also obsolete.[79] This rule specifies time periods by which site-specific SMR 900 MHz systems must meet certain loading requirements. The 900 MHz SMR band has been auctioned-over and the timeframe for site-specific SMR 900 MHz systems to meet loading requirements has since expired.

Section 90.653 of the Commission's Rules states that there shall be no limit of the number of systems authorized in a geographic area.[80] The rule is redundant and no longer serves any regulatory purpose.

The Commission should eliminate the loading requirement in Section 90.658 of the Rules.[81] This rule contains an obsolete reporting requirement for SMR systems licensed before 1993, and no longer applies to any existing licensees.

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76 47 CFR § 90.653.

77 Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Order,* 13 FCC Rcd. 1533 (1997) and *Memorandum Opinion and Order,* 12 FCC Rcd. 18349 (1997).

78 Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Memorandum Opinion and Order on Remand,* 14 FCC Rcd 21679 (1999).

79 47 CFR § 90.631 (i).

80 47 CFR § 90.653.

81 47 CFR § 90.658.

16. PART 90 -- PRIVATE LAND MOBILE RADIO SERVICES -- SUBPART U -- COMPETITIVE BIDDING PROCEDURES FOR 900 MHZ SPECIALIZED MOBILE RADIO SERVICE; AND SUBPART V -- COMPETITIVE BIDDING PROCEDURES FOR 800 MHZ SPECIALIZED MOBILE RADIO SERVICE

Sections 90.813 and 90.911 of the Commission's Rules authorize and set forth procedures for 800 MHz and 900 MHz geographic area licensees to partition and disaggregate their spectrum licenses.[82] The Commission should modify Sections 90.813(f) and 90.911(f) of the Rules to permit the partitionee/disaggregatee, as well as the original licensee, to certify that it will satisfy the construction requirements for the entire market.[83] The increased flexibility for geographic area licensees would not affect the Commission's construction requirements for any geographic area license. Additionally, the Commission should modify its rules to permit geographic area licenses to be consolidated and aggregated, as well as partitioned and disaggregated. This rule modification would increase the flexibility for licensing geographic area systems without negatively affecting construction or other licensing requirements.

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82 47 CFR § 90.813 (stating rules for partitioned licenses and disaggregated spectrum for 900 MHz licensees); 47 CFR § 90.911 (stating rules for partitioned licenses and disaggregated spectrum for 800 MHz licensees).

83 47 CFR §§ 90.911(f); 90.813(f) (the current rules allow the disaggregating parties to elect for the original licensee to submit supporting documents for the construction requirements for the entire market).

III. CONCLUSION

CTIA respectfully submits that the public interest requires that the Commission conduct its 2002 biennial review, on an expedited basis, of *all* regulations affecting CMRS carriers. Moreover, the Commission's review should be guided by the standard set forth in Section 11 that regulations must be repealed or modified unless they are found to be necessary in the public interest. As noted above, CTIA has identified many, but certainly not all, of the regulations affecting wireless carriers that are no longer necessary in the public interest and must be repealed or modified under the biennial review required by Section 11.

Respectfully submitted,

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